

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures--Hearings

Article 4. Administrative Hearing Procedures for Review of Citations

Subarticle 9. Hearings

§ 60075.33. Conduct of Hearing.

(a) The hearing shall be presided over by a hearing officer and shall be conducted in the English language.

(b) The hearing officer shall conduct a fair and impartial hearing in which each party has a reasonable opportunity to be heard and to present evidence.

(c) Each party to the proceeding shall have these rights: To call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations; to impeach any witness regardless of which party first called the witness to testify; and to rebut the opposing evidence against him. If a party does not testify on his or her behalf, the party may be called and examined as if under cross-examination.

(d) The complainant shall present the citation and the evidence supporting its issuance, and any other material that is pertinent to the issue to be determined by the hearing officer. The citee has the right to examine, respond to, or rebut the citation and any proffered evidence and material. The citee may offer any documents, testimony, or other exculpatory evidence which bears on appropriate issues, or may be relevant to the penalty amount.

(e) At the close of citee's presentation of evidence, the parties respectively have the right to introduce rebuttal evidence that is necessary to resolve disputed issues of material fact, subject to any limits imposed by the hearing officer pursuant to subparagraph (f)(1) below.

(f) The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall define the issues and the order in which evidence will be received.

(g) The hearing officer may:

(1) Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

(2) Require the authentication of any written exhibit or statement; and

(3) Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence.

(4) Exclude persons whose conduct impedes the orderly conduct of the hearing;

(5) Restrict attendance because of the physical limitations of the hearing facility; or

(6) Take other action to promote due process or the orderly conduct of the hearing.

(h) The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall define the issues and the order in which evidence will be received.

(i) Hearings shall be recorded electronically. The recording made by the Administrative Hearing Office shall be the official recording of the hearing.

(1) The hearing office will not normally prepare a verbatim transcript of the official recording, but the hearing officer may order one if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one (1) copy to the hearing office and one (1) copy to the other party.

(2) The official recording of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

NOTE: Authority cited: Sections 39600, 39601, 43028, 43031(a) and 44011.6(m), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Sections 43028, 43031(a) and 44011.6, Health and Safety Code.

REFERENCE